and criminal actions, it is nevertheless noteworthy that the principal case is a criminal prosecution, and that the court supplied a serious omission of evidence not merely by judicially noticing the possibility of preserving the organ but also by assuming that it had in fact been so preserved. It is generally true that courts require much clearer proof in criminal than in civil actions, and it would seem therefore that the court here was influenced somewhat by the exigencies of the particular case and a desire to save it from reversal.

S. S. W.

THE USE OF INJUNCTION TO PREVENT A MULTIPLICITY OF SUITS AT LAW.—In the case of *Newell et al.* v. *Illinois Central R. Co.*, 63 So. 351, the Mississippi Supreme Court dealt with the right of a court of equity to enjoin the plaintiffs in a number of suits at law against the same defendant from further prosecuting them at law and to compel the merging of them into an equitable suit. In this case, a number of persons who had been injured in the wreck of an excursion train on the railroad of the defendant, had filed separate suits against the defendant to recover for injuries alleged to have been sustained. The railroad company sought an injunction against the further prosecution of the suits at law, asking the court of chancery to take jurisdiction of all the issues involved in the various suits. It was held that such an injunction would not be granted. The law in this country has been in an unsettled state, as regards this question, and the decision in the principal case shows the trend of modern authority.

Equity has jurisdiction, in certain cases, to restrain the bringing of a number of suits at law against the same defendant, and justifies the assumption of such jurisdiction on the ground that the law courts are inadequate to combine and adjust manifold and adverse claims and interests. By assuming jurisdiction, equity settles and disposes of the whole controversy in a single proceeding, and thus prevents a multiplicity of suits. Where a number of plaintiffs are suing a single defendant in several suits at law, the authorities agree that equity will decide the controversy in one suit in chancery, provided there is a community of interest between the plaintiffs. The question over which the authorities have differed is, what constitutes such a community of interest.

The view advanced by Mr. POMEROY and the courts which follow him is that in such cases, mere community of interest in the questions of law and fact involved in the general controversy is sufficient to justify equity jurisdiction. This proposition will be found in § 269 of Professor POMEROY'S work on EQUITY JURISPRUDENCE. One of the strongest cases in support of this view is the case of *Southern Steel Co.* v. *Hopkins*, 157 Ala. 175, 47 So. 274, 20 L. R. A. N. S. 484, 131 Am. St. Rep. 20, which overruled *Turner* v. *Mobile*, 135 Ala. 73, 33 So. 132. Another case holding this view is the case of *Whitlock* v. *Yazoo*, 91 Miss. 779, 45 So. 861.

The other view on the question is that community of interest in the questions of law and fact alone, will not justify equity jurisdiction. The case of *Tribbette* v. *Illinois Central R. R.*, 70 Miss. 182, 12 So. 32, 19 L. R. A.

660, 35 Am. St. Rep. 642, is the leading case supporting this view. This case stands for the proposition that before equity may order all the separate suits to be joined in one equitable proceeding, it must appear that there is some ground of equitable interference in the subject matter of the controversy, or common right or title involved, or there must be some common purpose in pursuit of a common adversary. The facts in this case were that sparks from a locomotive of the defendant had set fire to and destroyed the property of a number of owners, who had severally sued the defendant at law. The latter sought by injunction to have all the plaintiffs brought in, and the controversy settled in one suit in equity. The court refused to grant such an injunction, and found that Mr. POMEROY was not sustained in his "conclusions" stated in § 269 of his book, and that the cases cited there do not support the proposition that mere community of interest "in the questions of law and fact involved in the general controversy or in the kind and form of relief demanded and obtained by or against each individual member of the numerous body" is ground for the interposition of chancery to settle, in one suit, the several controversies. Another case holding the same view is *Vandalia Coal Co.* v. *Lawson,* 43 Ind. App. 226, 97 N. E. 47. This case was decided shortly after *Southern Steel Co.* v. *Hopkins,* supra, and in its decision criticizes the holding in that case very strongly.

Extensive notes on this subject will be found in 131 Am. St. Rep. 30, in 20 L. R. A. (N. S.) 848, and in 126 Am. St. Rep. 991. All of the annotators agree in saying that the law on the subject is in a state of hopeless confusion. Recently, however, and since the notes above referred to were compiled, there have been decisions which seem to clarify the situation somewhat, and which indicate that the modern trend of authority, in the state courts at least, is toward the decision of the *Tribbette* case, and away from the doctrine advocated by POMEROY, in the section above referred to. It is the purpose of this note to show this modern tendency of decision.

The case of *Whitlock* v. *Yazoo,* referred to above as supporting Mr. POMEROY'S rule, has been overruled by the subsequent Mississippi case of *Cumberland Tel. & Tel. Co.* v. *Williamson,* 101 Miss. 1, 57 So. 559. This case contains an extensive review of all the cases of importance in this question, decided subsequent to the *Tribbette* case.

The case of *Southern Steel Co.* v. *Hopkins,* also cited as being in support of the same rule, has been overruled in effect by the case of *Roanoke Guano Co.* v. *Saunders,* 173 Ala. 347, 56 So. 198, and expressly overruled by a later decision in the *Steel Co.* case, reported in 174 Ala. 465, 57 So. 11. This fact is especially significant when we consider that this case and the *Whitlock* case go far, if not further than any, in support of the view advanced by Mr. POMEROY.

In the latest edition of Mr. POMEROY'S book, two new sections have been added, in which, while the editor criticizes, to some extent, the *Tribbette* case, it is admitted that the decision in that case was correct. One of the sections added, (251½) is peculiarly applicable to the principal case. There it is said "The equity suit must result in a simplification or consolidation of the issues; if after the numerous parties are joined, there still remain several issues to be tried between the several parties, nothing has been gained by the court of

equity in assuming jurisdiction. In such case, while the bill has only one number upon the docket, and calls itself a single proceeding, it is in reality a bundle of separate suits, each of which is no doubt similar in character to each of the others, but rests nevertheless upon the distinct liability of one defendant."

The *Tribbette* case rightly held that an injunction could not be granted, because in that case, even had an injunction been granted, nothing would have been gained by the court of equity in assuming jurisdiction. But is it impossible to suppose that a case might arise where, even without a community of interest in the subject matter of the litigation, there could be such a community of interest in the fact and law involved, that equity could take jurisdiction without being confronted with a situation where there still remained several issues to be tried between the several parties? We think not. Clearly if such a case should arise, something *would* be gained by the court of equity in assuming jurisdiction.

The most reasonable view in this whole question, seems to be that expressed by the editor in the sections mentioned above as added to POMEROY, EQUITY JURISPRUDENCE. The same view, in a little more detail, is to be found in the dissenting opinion of MARSHALL, J., in the case of *Illinois Steel Co.* v. *Schroeder,* 133 Wis. 561, 113 N. W. 51, where he says: "No common title as to one entire thing or community of rights in such thing, each party being interested in the one particular thing, title or right to be settled by litigation, is absolutely essential to an action to prevent a multiplicity of suits. It is sufficient if there are sufficient common points as to title, rights or questions of law or fact, to warrant the court in the particular situation in opening its doors." In other words, each case is to be decided on its own merits, and the question as to whether, to use the words of POMEROY, anything will be gained by a court of equity in assuming jurisdiction, or not, is to be left to the discretion of the judge. The United States Supreme Court lays down the same rule in *Hale* v. *Allison,* 188 U. S. 56. See also in this connection, the opinion of PITNEY, V. C., in *Inhabitants of Cranford* v. *Watters,* 61 N. J. Eq. 284. S. E. G.

THE EFFECT GIVEN TO FOREIGN JUDGMENTS NOT BASED ON PERSONAL SERVICE.—The well established rule that the courts of one jurisdiction will not enforce judgments obtained against its own citizens in foreign jurisdictions, in the absence of personal service, apparently received an important qualification in the recent case of *Phillips* v. *Batho,* [1913] 3 K. B. 25. In that case the defendant, an English subject, was named as co-respondent in divorce proceedings instituted in India, was served with process by registered post in England, and a judgment for damages was rendered against him ancillary to the decree for divorce, in accordance with a statute permitting the same. In a suit on the judgment in England a recovery was permitted.

In *Emanuel* v. *Symon* [1903] 1 K. B. 302, BUCKLEY, L. J., quoting from *Rousillon* v. *Rousillon,* 49 L. J. Ch. 338, enumerates five cases in which the courts of England will give effect to foreign judgments in personam, "(1) where the defendant is a subject of the foreign country in which the judg-